

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

BILLIE DEAN LOGAN)
)
Plaintiff,)
v.) No. 06-2482-MLV
)
SHELBY COUNTY; ANDREW TABOR,)
LIEUTENANT MOORE; DR. OBI,)
SHELBY COUNTY SHERIFF MARK)
LUTRELL; MAYOR A. C. WHARTON,)
)
Defendants.)

REPORT AND RECOMMENDATION ON DEFENDANT'S SECOND MOTION TO
DISMISS FOR FAILURE TO PROSECUTE AND/OR COMPLY WITH COURT'S ORDER

Before the court is the November 19, 2007 motion of the defendant, Dr. Obi, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, to dismiss the plaintiff's lawsuit with prejudice for failure to prosecute and/or to comply with the orders of this court requiring the plaintiff to file responses to Dr. Obi's discovery requests and provide Rule 26(a) disclosures. The motion was referred to the United States Magistrate Judge for a report and recommendation. The plaintiff has not responded to the motion, and the time for response has expired. For the reasons that follow, it is recommended that the motion be granted.

Dr. Obi served interrogatories and requests for production of documents on the plaintiff, of which a response was due by August 14, 2007. The plaintiff failed to respond. The plaintiff has also failed to provide the Rule 26(a) initial disclosures that were due

by September 30, 2007. Dr. Obi has moved twice for orders compelling the plaintiff to respond to the interrogatories and requests for documents and to provide his Rule 26(a) disclosures. The plaintiff failed to respond to either motion to compel. The court most recently ordered the plaintiff to respond to the discovery requests and provide his Rule 26(a) disclosures within seven days of the date of entry of the court's order which entry occurred on December 13, 2007. In the order, the court warned the plaintiff that failure to comply with orders of the court would lead to dismissal of his complaint. The plaintiff has failed to comply with the court's orders and has failed to file responses to Dr. Obi's discovery requests or to provide the required Rule 26(a) disclosures.

Rule 41(b) provides:

(b) Involuntary Dismissal; Effect. If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule--except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19--operates as an adjudication on the merits.

FED. R. CIV. P. 41(b).

Here, the plaintiff has failed to comply with the December 13, 2007 order of the court and has offered no justification for his failure. He was sufficiently warned that failure to comply with the court's order would result in dismissal of his claims.

Accordingly, it is recommended that the plaintiff's lawsuit be dismissed with prejudice.

Respectfully submitted this 2nd day of January, 2008.

s/ Diane K. Vescovo
DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE

NOTICE

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT MUST BE FILED WITHIN TEN (10) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN TEN (10) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND FURTHER APPEAL.